

12 NATHALIE THUY VAN,
13 Plaintiff,
14 v.
15 LANGUAGE LINE, LLC,
16 Defendant.

Case No. 14-CV-03791-LHK

**ORDER CLARIFYING CLAIMS
REMAINING FOR TRIAL**

18 After reviewing the parties' filings, and in light of Plaintiff Nathalie Thuy Van's
19 ("Plaintiff") pro se status, the Court provides clarification on certain of the claims remaining in the
20 case. Trial is scheduled to begin the week of July 25, 2016.

21 **A. Plaintiff's Claim under California Labor Code § 226**

22 In Plaintiff's motion for summary judgment, Plaintiff presented claims under both
23 California Labor Code § 226(a) and § 226(c). The Court granted summary judgment as to
24 Plaintiff's claim under California Labor Code § 226(c), which provides for timely inspection of
25 records, because that claim is time barred. ECF No. 244 at 34–35. However, the Court denied
26 summary judgment on Plaintiff's claim under California Labor Code § 226(a), which requires
27 employers to provide accurate itemized wage statements. *Id.* at 36. Plaintiff's claim under section

1 226(a), for accurate itemized wage statements, was not dismissed and Plaintiff may recover for
2 violations of section 226(a) within the one year statute of limitations.

3 At summary judgment, Plaintiff argued that Defendant violated section 226(a) because
4 Plaintiff's wage statements "did not reflect all of the overtime and hours she worked." ECF No.
5 211 (Plaintiff's Motion for Summary Judgment), at 11. That is the claim that Plaintiff may
6 present at trial.

7 Plaintiff did not argue at summary judgment that Defendant violated section 226(a) by
8 forging wage statements and producing these forged wage statements as discovery in the instant
9 case. Nor did Plaintiff present this argument in her complaint, or in her current filings. *See* ECF
10 No. 61 (First Amended Complaint), ¶¶ 26–30. Thus, Plaintiff may not argue that Defendant
11 violated section 226(a) by forging wage statements and producing these forged wage statements in
12 discovery. Moreover, Plaintiff may not argue at trial that Defendant's alleged wage statement
13 forgery during discovery is a violation of section 226(a).

14 **B. Plaintiff's Claim under California's Unfair Competition Law ("UCL")**

15 Plaintiff seeks to recover, under the UCL, civil penalties in the amount of \$6,000 per
16 violation. However, the section cited by Plaintiff in Plaintiff's objections to the proposed
17 preliminary jury instructions and the Court's pretrial conference order, California Business and
18 Professional Code section 17207, applies to "[a]ny person who intentionally violates any
19 injunction prohibiting unfair competition issued pursuant to Section 17203." No injunction has
20 been issued against Language Line, LLC. In addition, civil penalties are only available to public
21 prosecutors such as the Attorney General. Thus, section 17207 does not apply here, and Plaintiff
22 may not recover civil penalties.

23 Instead, Plaintiff may recover restitution. As explained in the summary judgment order,
24 this means that Plaintiff may recover unlawfully withheld overtime wages, *see Cortez v. Purolator*
25 *Air Filtration Prods. Co.*, 23 Cal. 4th 163, 177 (2000), and additional hours of pay for missed
26 meal and rest breaks, *see Valenzuela v. Giumarra Vineyards Corp.*, 614 F. Supp. 2d 1089 (E.D.
27 Cal. 2009). Thus, under the UCL, Plaintiff may recover for overtime and meal and rest break

1 violations for the past four years.

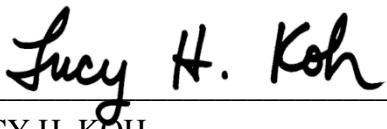
2 At summary judgment, the Court found that Defendant committed 136 meal and rest
3 period violations in the past four years. Thus, at trial Plaintiff does not need to prove that these
4 violations occurred. Rather, the issue at trial regarding these violations is the amount of restitution
5 owed.

6 **C. Plaintiff's Claim for Meal and Rest Periods**

7 Plaintiff seeks to withdraw her stipulation that only 136 meal and rest period violations
8 occurred. *See* ECF No. 294 (Plaintiff's stipulation). However, based on the Impact 360 schedules
9 provided at summary judgment, the Court found evidence of 136—not 144—violations.
10 Accordingly, the Court will not change the stipulation to 144 violations. However, the Court has
11 amended the language of the preliminary jury instructions to clarify that the Court has found 136
12 violations. *See* ECF No. 348 (Proposed Amendment to Preliminary Jury Instruction No. 13).

13 **IT IS SO ORDERED.**

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15 Dated: July 22, 2016

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LUCY H. KOH
United States District Judge